

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9480 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

RAMESHBHAI @ MICHAEL JAGUBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9480 of 2002
MS SUMAN PAHWA for Petitioner No. 1
MS NANDINI JOSHI LD. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 21/04/2003

ORAL JUDGEMENT

In this petition under Article 226 of the
Constitution of India, the petitioner-detenu has
challenged the legality and validity of the detention

order passed by the Police Commissioner, Surat City dated 9.9.2002 in exercise of powers vested under him by sub-section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA Act.") branding the petitioner-detenu as bootlegger within the meaning of sec. 2(b) of the PASA Act.

Mr. Shukla ld. counsel for the petitioner has taken me through the number of contentions raised by the petitioner assailing the legality and validity of the order of detention passed by the Police Commissioner, Surat city branding the present petitioner as bootlegger.

In the grounds for detention severed to the detenu, the authority has referred only one registered criminal offence punishable under the provisions of Bombay Prohibition Act. The said offence has been registered by DCB Police Station, Surat on 4.8.2002 and in that event, India made foreign liquor and Beer bottles worth Rs. 25,560/ was recovered during the course of investigation. It is referred by the authority that there are statements of two other unnamed witnesses who have expressed their apprehension and that fact that the petitioner is a chronic bootlegger and he is behaving dangerously.

I have carefully considered the affidavit-in-reply and the facts emerging from the record produced by the petitioner. Though the petitioner has challenged the legality and validity of the detention order on number of grounds, however, Mr. Shukla concentrated his arguments mainly on two grounds. It is submitted that the order under challenged is passed by the detaining authority mechanically and without application of mind. The statement of so-called unnamed witnesses were recorded by the Sponsoring Authority on 6.9.2002 and 7.9.2002. Both these statements were verified by the detaining authority on 8.9.2002 i.e. on the next day. The order of detention is passed on 9.9.2002. It is submitted that the ratio of the decision in the case of Kalidas Kahar vs. State of Gujarat, reported in 1993(2) GLR p. 1659 and the decision in the case of Ranubhai Bharwad vs. State of Gujarat, reported in 2000(3) GLR p. 2696, would be applicable in this set of facts. It can be held in the present case also that the powers conferred on the authority has been exercised arbitrarily and without application of mind. This goes to the root of the validity of the order and on this ground only, the order of detention can be quashed.

It is rightly submitted that in reality , the petitioner ought not to have been branded as "chronic bootlegger". The statements of two unnamed witnesses have been mechanically recorded and in a solitary incident, the petitioner was apprehended by the police and in a solitary incident, a person normally cannot be detained. It is true that if the offence is so serious and heinous which may disturb the public tranquility for a very long time can be detained, but on an offence punishable under the Bombay Prohibition Act, cannot be equated with exceptionally serious or heinous. The authority has wrongly recorded subjective satisfaction and has exercise the privilege under sec. 9(2) of the PASA Act. This goes against the privilege of the detenu flowing from Article 22(5) of the Constitution of India. This submission is well founded on both these counts. It can be held that the order of detention is not sustainable and, therefore, requires to be quashed and set aside.

In the result, this petition is allowed. The impugned order of detention dated 9.9.2002 passed by the Police Commissioner, Surat City is hereby quashed and set aside. The petitioner-detenu - Rameshbhai @ Michael Jagubhai Patel is set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. DS Permitted.

(C.K. BUCH, J.)
mandora/